SINGAPORE REPORTS.

HONG CHEOK LAM
v.
ONG SING MAI AND 4 OTHERS.

[App. Civ. Juris. (Murray-Aynsley, C.J.)
February 1, 1951]

[Singapore — District Court Appeal No. 4 of 1951]

Landlord and tenant — Breach of terms of tenancy against sub-letting — Notice to Quit complied with by principal tenant but not by sub-tenants — Whether acceptance of rent after knowledge of the breach amounts to waiver of right of re-entry — Control of Rent Ordinance, 1947.

The plaintiff/respondent let the premises known as No. 31 Desker Road, Singapore, on a month to month tenancy to one Lim Chiang Chew who in breach of the terms of tenancy against sub-letting, sub-let parts of the said premises separately to the first, second, third and fourth defendants/appellants.

On the 7th November, 1949, the respondent's solicitors wrote to the principal tenant complaining against the prohibited sub-letting.

On the 2nd December, 1949, a Notice to Quit was served on the principal tenant. Before the expiration of the said Notice to Quit the respondent accepted rents which had accrued due after the 7th November, 1949 (the date of complaint of the breach).

The principal tenant complied with the Notice to Quit but the appellants refused to quit. The respondent thereupon commenced proceedings against them for the recovery of possession on the ground, **inter alia**, that the sub-tenancy was prohibited by the terms of the tenancy.

The appellants contended that even if the terms of the tenancy prohibited sub-letting there was a waiver of the breach by the respondent's acceptance of rent from the principal tenant during the continuance of the contractual tenancy after knowledge of the breach.

The learned District Judge held that sub-letting was prohibited and that the acceptance of rent in the circumstances stated above did not amount to a waiver.

Held, on appeal, that the acceptance of rent after knowledge of the breach amounted to a waiver of the right of re-entry.

Norman v. Simpson[1] followed.

Case referred to:—

(1) *Norman v. Simpson* (1946) K.B. 158.

APPEAL from Civil District Court.

K. K. Bezboruah for the appellants/defendants.

N. N. Leicester for the respondent/plaintiff.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This appeal raises a point under the Control of Rent Ordinance of 1947. The facts are simple. The premises were let to one Lim Siang Chew. The learned District Judge has found as a fact that the terms of the letting forbade sub-letting. I am not prepared to disturb this finding. Later the landlord discovered this sub-letting and thereupon gave notice to quit. Before the expiry of the notice and during the continuance of the contractual tenancy the landlord received rent. Now the law on this point is clear. The affirmation of the tenancy after knowledge takes away the right of re-entry. It has been further held in the English case of *Norman v. Simpson*[1] that this has the effect of making the original sub-letting lawful. This was a majority decision of the Court of Appeal. du Parcq, L.J. dissented and if I had not had the advantage of seeing the judgments of the Lords Justices I should have decided the case on the lines of his judgment. I still feel unconvinced. No doubt in ordinary cases if the landlord lost his right of re-entry he was left without a remedy. The right of re-entry is, however, quite another thing from a right of action for damages for breach of contract. And where the breach of a condition had a remedy in damages there is logically no reason why the right should be affected by the loss of the right of re-entry. Even where there is no remedy in damages it does not seem to follow that the affirmation of the tenancy has the effect of making the sub-letting lawful. However, I must bow to superior authority and it is desirable, where possible, for the Courts of this Colony to follow the decisions of the Court of Appeal in England.

The next question is whether the difference in the wording of our local ordinance affects the meaning. In our Ordinance the words are "where the tenant was not prohibited from sub-letting by the terms of his tenancy." In England the words are "any sub-tenant to whom the premises . . . . have been lawfully sub-let". Now in ordinary cases lawful or unlawful depends entirely on the terms of the contract. If it is lawful to sub-let it is so because sub-letting is not prohibited by the contract between landlord and tenant.

If therefore acceptance of rent renders the sub-letting lawful it is because the law treats the acceptance of rent as impliedly altering the terms of the contract to this extent. I think, therefore, that for the present purpose the effect of the different words in the two enactments is the same.

The appeal must be allowed with costs.

Appeal allowed.

REX v. KOH HAI SUI.

[Orig. Crim. Juris. (Evans, J.) December 8, 1950]

[Singapore — Assize Case No. 56 of 1950]

Singapore Essential Regulations Proclamation, Regulations 34 and 81 — Prohibition of Imports Order,